

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

AARON HANSEN, ET AL., \* CIVIL ACTION  
\*  
PLAINTIFFS, \* CA-C-13-242  
\*  
VS. \*  
\*  
TOTAL SCREEN SOLUTIONS, INC., \* CORPUS CHRISTI, TEXAS  
\* MAY 12, 2014  
DEFENDANT. \* 3:01 P.M.  
\*  
\* \* \* \* \*

TRANSCRIPT OF MOTION HEARING

BEFORE THE HONORABLE NELVA GONZALES RAMOS  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: MR. DAVID I. MOULTON  
BRUCKNER BURCH, PLLC  
8 GREENWAY PLAZA, SUITE 1500  
HOUSTON, TEXAS 77046  
  
FOR THE DEFENDANTS: MR. DANIEL DOUGLAS PIPITONE  
MUNSCH HARDT KOPF & HARR, P.C.  
700 MILAM STREET, SUITE 2700  
HOUSTON, TEXAS 77002

COURT RECORDER: MS. GENAY ROGAN

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING  
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1 (The proceedings began at 3:01 p.m.)

2 (Call to Order of the Court.)

3 THE CLERK: Judge, regarding Hansen versus Total  
4 Screens, for the Plaintiffs we have Dave Moulton on the line.  
5 Is that correct?

6 MR. MOULTON: Yes.

7 THE COURT: And for the Defendants, we have Daniel  
8 Pipitone. Is that correct?

9 MR. PIPITONE: That's also correct. Thank you.

10 THE CLERK: The Judge will call the case.

11 THE COURT: All right. Court calls Cause Number  
12 2:13-242, Hansen, et al., versus Total Screen Solutions, et al.  
13 Y'all have already announced for the record. So we're here  
14 following up on issues with the Notice to Potential Plaintiffs.  
15 And I've reviewed the briefing. Court's not going to allow the  
16 Defendant's attorney's contact information to be in the notice.  
17 Court will order that the opt-in forms be returned to the  
18 Court, not to the Plaintiffs' attorney. Court again, I've  
19 stated this before, but will not allow electronic signatures.  
20 Is there anything else from the Plaintiffs?

21 MR. MOULTON: No, Your Honor.

22 THE COURT: Mr. Pipitone?

23 MR. PIPITONE: Your Honor, just a couple of things.  
24 One, I appreciate what you've just said, so I understand that.  
25 One thing that I would like to add in the, using the

1 Plaintiffs' notice then, or actually either the Defense or the  
2 Plaintiffs' notice, is a reference to the fact that Lauterbach  
3 will be acting as the class representative.

4 THE COURT: Lauterbach?

5 MR. PIPITONE: Yeah, the Plaintiff James  
6 Lauterbach --

7 THE COURT: Oh, okay. I see what you're saying.  
8 Yes.

9 MR. PIPITONE: Yeah. It's something we discussed at  
10 the hearing on April -- whatever that was.

11 THE COURT: Yes, I recall.

12 MR. PIPITONE: But it's not in this. I don't see it  
13 in the introduction of the Plaintiffs' notice.

14 THE COURT: Mr. Moulton?

15 MR. MOULTON: Your Honor, well, I think it's pretty  
16 clear in the notice where we, on Page 2 of our proposed notice,  
17 it says, "The named plaintiff brought this suit on his own  
18 behalf and on behalf of those similarly situated." And you  
19 know, the named plaintiff is -- actually the one I'm looking  
20 at --

21 MR. PIPITONE: It's actually in your first paragraph,  
22 David. You say, "on his own behalf, and on behalf of those  
23 similarly situated employees," which I don't think many people  
24 would understand to be that he's a class representative.

25 MR. MOULTON: Then later on we say that, later on in

1 How to Participate in this Lawsuit, "The named plaintiff  
2 brought this suit on his own behalf and on behalf of those  
3 similarly situated."

4 I think, I think that is actually a better  
5 description, Judge. I mean, I don't know if it matters either  
6 way, but it says it twice already in the notice.

7 MR. PIPITONE: And again, Your Honor, simply saying  
8 "similarly situated" is not telling a layperson in particular  
9 that James Lauterbach will be serving as their, his or her  
10 class representative in the litigation.

11 THE COURT: I don't have that right before me. I  
12 didn't know that was an issue. I'm having a little trouble  
13 pulling it up. Where --

14 MR. MOULTON: On 87-4 is our, is the proposed notice.

15 THE COURT: After we had discussed some of the  
16 earlier issues?

17 MR. MOULTON: You told us to look at your examples,  
18 right, and to come up with the, with a new notice. And 87-4 is  
19 Plaintiffs' attempt at that. And Defense filed a different  
20 one. The one I did, 87-4 was basically some examples you gave  
21 in Moore versus Bottom Line and Advanced Pipeline or something.  
22 I took that notice --

23 THE COURT: Okay. I'm pulling it.

24 MR. MOULTON: -- and changed the names and --

25 THE COURT: I've got it right here. So where, where

1 exactly is the objection?

2 MR. MOULTON: So Mr. Pipitone wants the inclusion of  
3 language that says that James Lauterbach is actually going to  
4 act as representative. And I'm saying that twice in the notice  
5 it says he is acting on his own behalf and on behalf of those  
6 who are similarly situated. I mean, I think it's already said  
7 twice.

8 THE COURT: Mr. Pipitone?

9 MR. PIPITONE: Yeah. Once again, Your Honor, I don't  
10 think a layperson is going to understand "on his own behalf and  
11 on behalf of those similarly situated."

12 All I'm seeking is what we discussed during the April  
13 3rd hearing. And Your Honor even indicated then that it wasn't  
14 inappropriate what I was asking for, and that's simply that the  
15 Plaintiff filed this case, and as a result he will be the class  
16 representative in the event that you choose to join the case.

17 THE COURT: I don't have an issue with that,  
18 Mr. Moulton. Maybe y'all can look at that.

19 Now, help me a second. So Hansen is out. Right?

20 MR. MOULTON: Yes, Your Honor.

21 MR. PIPITONE: Correct.

22 THE COURT: So should we -- we probably just need to  
23 be sure that our, anything we're sending out, maybe we need to  
24 restyle the case, just so that it's clear.

25 MR. MOULTON: No problem. I'll do it.

1 THE COURT: Yeah.

2 MR. MOULTON: I'll just have "James Lauterbach, on  
3 behalf of himself and others similarly situated."

4 THE COURT: I think so.

5 MR. MOULTON: That's a good idea. The only reason  
6 why I kept it is because that's still the --

7 THE COURT: I know. I know.

8 MR. MOULTON: But I'll certainly change it.

9 THE COURT: It's just I hate to see that in the  
10 style, and then us be saying something different in the body.  
11 So I don't have a problem. I will allow what Mr. Pipitone's  
12 requesting. But let's just go ahead and clear it up right now.  
13 Where and what would you like put in?

14 MR. PIPITONE: What I would like to have in, and it  
15 can be placed at the end of the introduction paragraph, is just  
16 a sentence that says, "Because Plaintiff filed this case,"  
17 comma, "he will serve as your class representative in the event  
18 you choose to join the case."

19 THE COURT: Okay. Mr. Moulton?

20 MR. MOULTON: I think that's fine. We should, we  
21 should also just explain, I think, that just because he's a  
22 class representative doesn't mean he makes all the decisions.

23 THE COURT: No, I think, I think let's just leave it  
24 as Mr. Pipitone suggested. And if they have any questions, we  
25 list Plaintiffs' attorney's contact information there.

1 MR. MOULTON: Okay. Thank you.

2 MR. PIPITONE: And Judge, not to burden you, but  
3 there is one other thing.

4 THE COURT: Okay.

5 MR. PIPITONE: In Mr. Moulton's description of the  
6 lawsuit -- and again, I think that's Pleading Number 87,  
7 Exhibit Number 4.

8 THE COURT: Okay.

9 MR. PIPITONE: This is his proposed notice.

10 THE COURT: Okay.

11 MR. PIPITONE: Tell me when, Your Honor.

12 THE COURT: Go ahead.

13 MR. PIPITONE: In the third line, he's talking about  
14 "Plaintiff alleges TSS should have classified him as an  
15 employee," and then he puts in here, "because he was not in  
16 business for himself."

17 Now, I don't -- I object to that information because  
18 whether someone is in business for himself or not is not the  
19 test of whether someone's an independent contractor or not.

20 Previously, Mr. Moulton did not include that language  
21 in -- well, you know what, I take that back, Your Honor. What  
22 I would like to do is just simply delete that information.

23 THE COURT: Mr. Moulton? Mr. Moulton, is that  
24 necessary?

25 MR. MOULTON: I think it is, because I think that is

1 the standard, that the ultimate issue is whether or not they're  
2 in business for themselves. I mean, the Fifth Circuit has said  
3 that. It's just another way of saying whether or not, you  
4 know, the economic defense test. That's the same thing.

5 And you know, I think Defendants, you know,  
6 Defendants have a -- their description is equally  
7 objectionable, the way they characterize theirs, because it's  
8 not about the agreement, right, but that's what they want,  
9 that's how they want to describe their suit. But you know, but  
10 anyway, in fact ours -- that is the test. And that is the  
11 reason why we're claiming he's an employee.

12 MR. PIPITONE: Your Honor, if I may, I don't object  
13 to the description of the Defendant's version in Mr. Moulton's  
14 introductory paragraph. But moving on to this, if we're going  
15 to talk about "in business for yourself," and that in essence  
16 is a summary of the economic realities test, one, I don't think  
17 that's a very good summary. And if we're going to put in  
18 anything about what the test is, then I suggest we put in  
19 control and supervision --

20 THE COURT: Nah, I think -- I don't know that that  
21 little phrase is necessary, Mr. Moulton. So "Plaintiff alleges  
22 TSS should have classified him as an employee, and therefore,  
23 TSS should have paid him time-and-a-half," et cetera,  
24 et cetera?

25 MR. MOULTON: Right. The reason why I included that



1 is sort of response to theirs, because they're putting in the  
2 reason that they believe that the Plaintiffs are not employees.  
3 So I thought if we're going to respond to that, we need to put  
4 in a reason why we think they are employees.

5 And so it's just trying to balance it out. So if  
6 we're going to strike that, I think it would be appropriate to  
7 strike out the reason why the Defendant is saying that they're  
8 not.

9 THE COURT: Which is where?

10 MR. MOULTON: Otherwise, they'll just read this  
11 notice, and they'll think, well, it must be that an agreement  
12 would make me an independent contractor, and they might not  
13 join.

14 THE COURT: Okay. Where are you talking about? I'm  
15 looking at that next paragraph.

16 MR. MOULTON: The very next paragraph. TSS, second  
17 sentence, "TSS contends that all TSS's Sit Hands, including  
18 Plaintiff, agreed that Sit Hands were and would be treated as  
19 independent contractors."

20 I think that's misleading because that's not the  
21 test. I mean, that's not -- if we put that out there, people  
22 may think that that's actually a reason not to join, which  
23 is --

24 MR. PIPITONE: Your Honor, when you permit, I'd like  
25 to respond.

1 THE COURT: You can respond. But I mean, they can't  
2 agree to that, if they don't fit within the elements, isn't  
3 that right?

4 MR. MOULTON: I'm sorry?

5 THE COURT: They can't, there can't be an agreement  
6 to violate the FLSA, just because the Plaintiffs say it's okay.  
7 Right?

8 MR. MOULTON: Right. There cannot be an agreement,  
9 which is why --

10 THE COURT: Right. No, I'm asking Mr. Pipitone.

11 MR. MOULTON: Oh.

12 MR. PIPITONE: No, I agree. Yeah, I'd agree, Your  
13 Honor. So we can take out the one word, "agreed," in the  
14 second line --

15 THE COURT: Okay.

16 MR. PIPITONE: -- including TSS -- essentially the  
17 second sentence should read, "TSS contends that all TSS's Sit  
18 Hands, including Plaintiff, were independent contractors prior  
19 to the initiation of their relationship with TSS."

20 THE COURT: I think that's good. Mr. Moulton?

21 MR. MOULTON: I think that would be, I think that  
22 would balance it out.

23 THE COURT: Yes.

24 MR. PIPITONE: Okay.

25 MR. MOULTON: If we're getting our part struck, then

1 strike that.

2 THE COURT: Right.

3 MR. PIPITONE: And I'm fine with that, Your Honor.

4 THE COURT: Okay. What else? So were y'all going to  
5 provide me then a final order?

6 MR. PIPITONE: Oh, Your Honor, I'm terribly sorry.  
7 One last thing.

8 THE COURT: Okay.

9 MR. PIPITONE: Looking at the Plaintiffs' notice,  
10 again that's the document that you were just looking at,  
11 turning to the second page --

12 THE COURT: Okay.

13 MR. PIPITONE: There is a paragraph right above where  
14 it says in bold print across the middle of the page that there  
15 is a deadline to join this lawsuit, there is a paragraph there,  
16 and -- right above that -- and in the second sentence, I would  
17 like to have stricken. It says, "If you do not join this case  
18 by properly filing a notice of consent," comma, I would like to  
19 say instead of that long phrase about not getting any relief,  
20 back wages, over time, et cetera, et cetera, just say you will  
21 not -- you will not be entitled to recover anything.

22 THE COURT: Mr. Moulton?

23 MR. PIPITONE: Or you will be entitled to no relief.

24 MR. MOULTON: I'm sorry. Excuse me?

25 THE COURT: So you will not be entitled to any

1 relief, period?

2 MR. PIPITONE: Correct. Yes.

3 MR. MOULTON: Well, you know, I think that's -- I  
4 think ours is just more descriptive. It makes it --

5 THE COURT: Yeah, I'm okay with --

6 MR. MOULTON: -- way less vague.

7 THE COURT: I'm okay with it as it is. So Court will  
8 allow it as it is.

9 MR. PIPITONE: Then that's all we have, Judge.

10 THE COURT: Okay. Then y'all will -- who's doing the  
11 editing?

12 MR. MOULTON: I'll do the editing.

13 THE COURT: And then you'll send it to Mr. Pipitone  
14 one more time, and then provide it to the Court for signature?

15 MR. MOULTON: That's right. Now, was there any --  
16 was there anything with the actual order? Or are you going to  
17 do your own, Your Honor?

18 THE COURT: No, because y'all kind of know what, how  
19 much time the Defendant needs, and I leave kind of the order --  
20 there's things in there as to the time frame for information to  
21 be turned over, I kind of rely on you all to work that up also.

22 MR. PIPITONE: And I think, Judge, Mr. Moulton and I  
23 have probably already gone through that, so I think we're fine  
24 there.

25 THE COURT: Okay, with that --

1 MR. PIPITONE: Unless you disagree, David.

2 MR. MOULTON: No, I think that's not -- it's just  
3 been so long since we talked, but just --

4 THE COURT: Well, just review the order and the  
5 notice again. Mr. Moulton, if you make any changes, let  
6 Mr. Pipitone know what those changes are so he can review them.  
7 And then when everyone says okay, send it to me.

8 MR. MOULTON: Okay. Great.

9 THE COURT: So that's the order and the notice. All  
10 right. If nothing further, you're excused.

11 MR. PIPITONE: Your Honor --

12 THE COURT: Yes.

13 MR. PIPITONE: If I may, this is not on the docket  
14 necessarily, but I just want to bring it up. The motion for  
15 summary judgment for Gary Mills, we left that, and after the  
16 April 3rd hearing that Mr. Moulton would pursue some discovery  
17 so we could make it ripe for Your Honor's determination. And I  
18 just wanted to bring up nothing's happened there yet. And so I  
19 just don't want that to be disregarded. And I don't want Your  
20 Honor to dismiss it without prejudice. I'd rather --

21 THE COURT: I won't do anything without contacting  
22 y'all, but I also don't want it sitting there. Is the motion  
23 to compel still pending also?

24 MR. MOULTON: Yes, Your Honor. We received some more  
25 discovery yesterday from -- I'm sorry -- last week from the

1 Defendants. We're reviewing that. And we have been trying to  
2 confer some more to get a reply to get that figured out.

3 THE COURT: And what about the MSJ?

4 MR. MOULTON: Kind of going back and forth type of  
5 deal to get our schedule lined up. I'm planning to talk to  
6 Mr. Pipitone's associate today, so I think we'll be able to get  
7 that moving along.

8 But I think that's connected to the motion for  
9 summary judgment, because there's a -- even before we do a lot  
10 of, you know, more specific discovery, this is some general  
11 things we still need that we're working on.

12 THE COURT: Well, why don't I set it for a status  
13 hearing in two weeks, see where we are on the motion to compel  
14 and the motion for summary judgment.

15 MR. PIPITONE: All right, Judge. Thank you very  
16 much.

17 THE COURT: Brandy, you want to give them a date?

18 THE CLERK: June 3rd at 3:00 o'clock. That's a  
19 little over two weeks.

20 THE COURT: June 3rd at 3:00, Counsel? Is that okay  
21 with your schedules?

22 MR. PIPITONE: It is for mine, Your Honor. This is  
23 Dan Pipitone.

24 THE COURT: Mr. Moulton?

25 MR. MOULTON: Can I just pencil it in right now? I

1 don't know exactly what day I'm going on vacation.

2 THE COURT: Okay. So you're checking --

3 MR. MOULTON: I'm still trying to figure that out.

4 No, I'm sorry for not knowing, but it's not up to me.

5 THE COURT: Well, we'll set it. If you've got an  
6 issue, let Brandy know.

7 MR. MOULTON: Right, I will. Okay.

8 THE COURT: Okay. Then you're excused.

9 MR. MOULTON: What was the time again? I'm sorry.

10 THE COURT: June 3rd at 3:00. 3:00 o'clock.

11 MR. PIPITONE: Thank you, Your Honor.

12 THE COURT: All right. Thank you. You're excused.

13 (Proceedings concluded at 3:17 p.m.)

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18 I, court approved transcriber, certify that the foregoing is a  
19 correct transcript from the official electronic sound recording  
20 of the proceedings in the above-entitled matter.

21

22

23

/s/ Molly Carter  
Molly Carter

May 29, 2014  
Date

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